

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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| LYNDAL KIMBLE |) | CASE NO. 4:08CV1048 |
| |) | |
| PETITIONER, |) | JUDGE SARA LIOI |
| |) | |
| vs. |) | |
| |) | |
| RICHARD GANSHEIMER, Warden, |) | OPINION AND ORDER |
| |) | |
| RESPONDENT. |) | |
| |) | |

On December 4, 2009, the Court accepted the report and recommendation of Magistrate Judge James S. Gallas and denied Petitioner Lyndal Kimble's application for a writ of habeas corpus. (Doc. No. 30.) Furthermore, this Court certified that, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from that decision could not be taken in good faith and that there was no basis upon which to issue a certificate of appealability under 28 U.S.C. § 2253(c) and FED. R. APP. P. 22(b).

On December 22, 2009, Kimble filed a notice of appeal to the Sixth Circuit Court of Appeals, appealing this Court's order denying his writ of habeas corpus. (Doc. No. 32.) On that same day, Kimble filed a motion for reconsideration in this Court with respect to his denied petition for habeas corpus.

"It is clear that the filing of a notice of appeal operates to transfer jurisdiction of the case to the court of appeals, and the district court is thereafter without jurisdiction except to act in aid of the appeal." *Adkins v. Jeffreys*, 327 Fed. Appx. 537, 539 (6th Cir. 2009). "The traditional rule is that a timely appeal divests the district court of jurisdiction to reconsider its

judgment until the case is remanded by the Court of Appeals.” *United States v. Garcia-Robles*, 562 F.3d 763, 767-768 (6th Cir. 2009) (internal quotations and citations omitted). At the time of the filing of Kimble’s motion to reconsider, he already had filed a notice of appeal to the Sixth Circuit. This notice of appeal divests this Court of jurisdiction to rule on Kimble’s motion, and this Court is therefore not required to consider the merits of the motion for consideration. *See Adkins*, 327 Fed. Appx. at 539-40. Accordingly, Kimble’s motion for reconsideration is **DENIED**.

IT IS SO ORDERED.

Dated: January 6, 2010



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE